

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

(1) MICHAEL C. WASHINGTON,)

Plaintiff,)

vs.)

(1) TIMOTHY ROGERS,)

(2) MICHAEL GILLESPIE,)

(3) TRACI SIMPSON,)

(4) KAY BAUMAN,)

Defendants.)

Case No. CIV-18-1116-D

(1) MICHAEL C. WASHINGTON,)

Plaintiff,)

v.)

(1) THE CITY OF OKLAHOMA CITY,)

(2) POLICE CHIEF BILL CITY,)

(3) LT. J. RODGERS,)

(4) OFFICER H. BENNETT,)

(5) OFFICER J. BUSCH, and)

(6) OFFICER G. BELL,)

Defendants.)

AMENDED NOTICE AND PETITION FOR REMOVAL¹

¹ The purpose of this Amended Notice and Petition for Removal is to correct the style of the case. Plaintiff's state court action. CV-2017-2400 lists one set of defendants in the Petition (Doc. No. 1-1), and a separate set of defendants in the Amended Petition (Doc. No.1-21). The Notice of Removal filed November 14, 2018 (Doc. No. 1) included only defendants listed in the Amended Petition.

Pursuant to 28 U.S.C. §1441(a), 28 U.S.C. 1446 and Rule 81.2 of the Local Rules for the Western District of Oklahoma, Defendants Joseph Busch, Gregory Bell and Heather Bennett petition this Court for removal of this case to the United States District Court for the Western District of Oklahoma, from the District Court of Oklahoma County, where it was filed as case number CV-2017-2400. In support of this Petition, Defendants Busch, Bell and Bennett state the following:

PROCEDURAL HISTORY

1. Plaintiff, Michael C. Washington, acting pro se and in forma pauperis, filed this lawsuit on December 7, 2017. The December 7, 2017 Petition did not include Joseph Busch, Gregory Bell or Heather Bennett as Defendants. A copy of the first Petition is attached as Exhibit 1.² (to the Original Notice of Removal filed November 14, 2018). A copy of Plaintiff's Pauper's Affidavit is was attached as Exhibit 2.

2. Sometime between December 7, 2017 and April 17, 2018, Plaintiff Washington created, but did not file, a different Petition. This unfiled Petition used the same case number, CV-2017-2400, but named a completely different set of defendants. It was essentially a new lawsuit against new defendants, with new causes of action. On or about April 17, 2018, Plaintiff attempted to "serve"

² All exhibit references are to the Original Notice of Removal filed November 14, 2018 (Doc. No. 1). Because the exhibits to the Original Notice total more than 360 pages, and because no additional pleadings have been filed in the state court case other than a copy of the Notice of Removal, the undersigned counsel has not reattached the exhibits to this Amended Notice.

the unfiled Petition on Defendants Busch, Bell and Bennett through Lori Knox.³ Copies of these returns of service, along with the unfiled Petition attached to the summons, are attached as Exhibits 14, 15, and 16.⁴

3. On April 20, 2018 Plaintiff Washington filed a Motion for Permissive Joinder of Parties, which was denied because it did not identify the additional defendants Plaintiff was seeking to add or the reason for their joinder. A copy of the Motion is attached as Exhibit 17. The minute order denying the motion is attached as Exhibit 19.

4. On May 24, 2018, the undersigned counsel filed a Special Appearance and Motion to Quash on behalf of Defendants J. Busch, H. Bennett, and G. Bell. An amended version was filed on May 25, 2018, because the original was inadvertently filed without a signature. Copies of the Motion to Quash and Amended Motion to Quash are attached as Exhibits 18 and 20.

5. On June 4, 2018, Plaintiff filed an Amended Petition, which is attached as Exhibit 21. Plaintiff did not serve the Amended Petition on H. Bennett, J. Busch, or G. Bell, although he did mail a copy to the undersigned counsel.

³ Ms. Knox is part of the Oklahoma City Police Court Liaison's office, which accepts subpoenas on behalf of police officers who are subpoenaed to testify as witnesses.

⁴ The exhibit numbers are non-consecutive because all of the pleadings filed in CV-2017-2400 are attached as exhibits, but not all are addressed in the Procedural History section of this Notice.

6. On July 2, 2018, the undersigned counsel filed a Second Amended Special Appearance and Motion to Quash Summons, which was granted. A copy of the Second Amended Special Appearance and Motion to Quash Summons is attached as Exhibit 22. Copies of Plaintiff's Response, the officers' Reply, and the September 4, 2018 Journal Entry are attached as Exhibits 24, 26, and 29.

7. On August 27, 2018, Plaintiff filed a Motion to Vacate the Order Quashing Summons, which was denied. A copy of the Motion to Vacate is attached as Exhibit 27. Copies of the officers' Response to the Motion to Vacate, and the September 28, 2018 Journal Entry denying the motion are attached as Exhibits 32 and 34.

8. On September 11, 2018, Plaintiff filed a "Motion to Correct Journal Entry Date Nunc Pro Tunc Filed on September 4, 2018 Granting Defendants Motion to Quash Summons," which was denied. A copy of the Motion to Correct is attached as Exhibit 31. Copies of the officers' Response to the Motion to Correct, and the October 12, 2018 Journal Entry denying the motion are attached as Exhibits 35 and 37.

9. On October 25, 2018, Plaintiff served Defendants Bell, Busch and Bennett, through the Chief's Department of the Oklahoma City Police Department. Copies of the Returns of Service for Defendant G. Bell, Defendant J. Busch and Defendant Heather Bennett are attached as Exhibits 39, 40 and 41.

10. Also on October 25, 2018, Plaintiff filed a second Pauper's Affidavit. A copy is attached as Exhibit 38.

11. Plaintiff's original Petition (Exhibit 1) included Kay Bauman as a Defendant. However, she was not named as a Defendant in the Amended Petition filed June 4, 2018 (Exhibit 21). At the time of this removal, Ms. Bauman has a pending Motion to Compel which was filed October 12, 2018 and is set for hearing on November 16, 2018. A copy of this Motion is attached as Exhibit 36.

12. Pursuant to Local Rule 81.2, a copy of the state court docket sheet from CV-2017-2400 is attached as Exhibit 43.

BASIS FOR REMOVAL

1. Removal is proper under 28 U.S.C. §1441(a) because the Amended Petition includes claims over which the district court has original jurisdiction under 28 U.S.C. §1331. Specifically, Plaintiff is alleging that Defendants Busch, Bennett and Bell violated his First, Fourth, Fifth and Fourteenth Amendment rights. See, Exhibit 9.

2. Removal is timely under 28 U.S.C. 1446(b)(1) and *Murphy Brothers v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 119 S. Ct. 1322, L.Ed. 2d 448 (1991), because Defendants Busch, Bennett and Bell filed this notice of removal within 30 days of October 25, 2018, which is the date they were served with the Amended Petition. In *Murphy*, the Supreme Court held that an individual is not required to engage in litigation unless notified of the action, and brought under a court's authority, by formal process. *Id.* at 1325. Receipt of a courtesy copy of

the complaint “unattended by formal service” does not trigger the 30 day period for removal. *Id.*

3. Counsel for Defendants Busch, Bennett and Bell has spoken to Amanda Mullins, who represents Defendant Kay Bauman, and she has no objection to removal. Ms. Bauman is the only other Defendant who has been served at this time, although she was not named in or served with the Amended Petition.

Respectfully submitted,

s/ Stacey Haws Felkner

Stacey Haws Felkner, OBA No. 14737

COLLINS, ZORN & WAGNER, P.C.

429 N.E. 50th Street, 2nd Floor

Oklahoma City, OK 73105-1815

Telephone: (405) 524-2070

Facsimile: (405) 524-2078

E-mail: shf@czwlaw.com

ATTORNEY FOR DEFENDANTS
OFFICER H. BENNETT, OFFICER J.
BUSCH AND OFFICER G. BELL

CERTIFICATE OF SERVICE

I hereby certify that on November 20, 2018, I mailed the attached document to the following by regular mail *via* the United States Postal Service:

Michael C. Washington
P.O. Box 53513
Oklahoma City, OK 73152
Pro Se Plaintiff

F. Thomas Cordell
Amanda Mullins
Frailey, Chaffin, Cordell, Perryman & Sterkel, LLP
201 N. 4th Street
Chickasha, OK 73023

William F. Comstock
WILLIAM F. COMSTOCK, P.C.
501 N.W. 13th Street
Oklahoma City, OK 73103
Attorney for Defendant Kay Bauman

s/ Stacey Haws Felkner
Stacey Haws Felkner